



Council Communication

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: BRYAN GALVIN, WELLS FIELD SUPERVISOR

THROUGH: NICOLE LANCE, INTERIM PUBLIC WORKS DIRECTOR

MEETING DATE: AUGUST 1, 2013

SUBJECT: NEW CONTRACTS 2014-4108-0051, 2014-4108-0052, 2014-4108-0057
FOR PUMP REPAIRS AND DEEP WELL MAINTENANCE SERVICES

STRATEGIC INITIATIVE: INFRASTRUCTURE

LEGAL REVIEW

☒ Complete

☐ N/A

FINANCIAL REVIEW

☒ Complete

☐ N/A

RECOMMENDED MOTION

MOTION TO ENTER INTO AGREEMENTS 2014-4108-0051, 2014-4108-0052, 2014-4108-0057 PURSUANT TO A COOPERATIVE PURCHASING AGREEMENT UTILIZING CITY OF CHANDLER CONTRACT WAO-936-2649 FOR PUMP REPAIRS AND DEEP WELL MAINTENANCE SERVICES, IN AN AMOUNT NOT TO EXCEED \$410,000 FOR FISCAL YEAR 2013-2014 WITH OPTION TO RENEW FOR ONE ADDITIONAL ONE YEAR TERM AND AUTHORIZE THE MAYOR TO EXECUTE THE REQUIRED DOCUMENTS.

A: CONTRACT NO. 2014-4108-0051 (ORIG CONTRACT 2012-4108-0019) WITH WEBER WATER RESOURCES, LLC IN THE AMOUNT NOT TO EXCEED \$150,000;

B: CONTRACT NO. 2014-4108-0052 (ORIG CONTRACT 2012-4108-0020) WITH KELLER ELECTRICAL INC. IN THE AMOUNT NOT TO EXCEED \$120,000;

C: CONTRACT NO. 2014-4108-0057 (ORIG CONTRACT 2012-4108-0026) WITH LAYNE CHRISTENSEN COMPANY IN THE AMOUNT NOT TO EXCEED \$140,000

BACKGROUND/DISCUSSION

The Town entered into contracts with Keller Electrical Inc, Layne Christensen Company, and Weber Water Resources, LLC, formerly known as Weber Group, LLC, on June 10, 2011 for pump repairs and deep well maintenance services. These Contracts expire August 31, 2013 and subsequent renewals have been exhausted. The Town will require such services this fiscal year.

The proposed Contracts are an agreement for pump repairs and deep well maintenance services pursuant to cooperative purchasing contract WAO-936-2649 between each Contractor and City of Chandler, AZ following a public bidding process by that government entity.

Cooperative purchases are exempt from the public bidding process, where the purchasing officer has made a written determination that re-bidding the contract is not likely to result in a lower price. Gilbert Municipal Code 2-357(b)(2). The purchasing officer has made this determination.

The Contracts will commence September 1, 2013 and expire on June 30, 2014, with option to renew for one additional one (1) year term. The contract price shall be adjusted as provided for in the cooperative purchasing contract.

The Contract was reviewed for form by Attorney Susan Goodwin.

FINANCIAL IMPACT

The following budget line items are included in the FY2013-2014 adopted budget.

210101.41080400.5299 Wells \$245,000

210101.41080302.5471 North Plant \$140,000

210101.41080303.5471 South Plant \$25,000

Financial impact reviewed by Cris Parisot, Budget Analyst.

STAFF RECOMMENDATION

Staff recommends the approval of the motion to enter into the attached agreements 2014-4108-0051, 2014-4108-0052, 2014-4108-0057 pursuant to City of Chandler cooperative purchasing contract WAO-936-2649 for pump repairs and deep well maintenance services commencing September 1, 2013 through June 30, 2014 with option for renewal.

Respectfully submitted,

Bryan Galvin
Wells Field Supervisor

Attachments and Enclosures:

Contract No. 2014-4108-0051, Weber Water Resources, LLC
Contract No. 2014-4108-0052, Keller Electrical Inc.
Contract No. 2014-4108-0057, Layne Christensen Company

AGREEMENT NO. 2014-4108-0051
TO PROVIDE SERVICES/SUPPLIES PURSUANT TO A
COOPERATIVE PURCHASING CONTRACT

This Agreement is made and entered into by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter designated as "Gilbert" and Weber Water Resources, LLC, an Arizona corporation hereinafter designated as the "Contractor."

Recitals:

A. Contractor has contracted with the City of Chandler to provide pump repair and deep well maintenance services, materials and/or equipment pursuant to Contract No. WAO-936-2649 (the Cooperative Purchasing Contract); and

B. Pursuant to A.R.S. § 41-2631 et seq. and Gilbert Municipal Code § 2-357, Gilbert has authority to utilize cooperative purchasing contracts and engage contractors under the terms thereof.

CONTRACTOR AND GILBERT, FOR THE CONSIDERATION
HEREINAFTER SET FORTH, PROMISE, COVENANT AND AGREE AS FOLLOWS:

1. Scope of Work.

1.1 Contractor shall provide the following services, materials and/or equipment:

Pump repair and deep well maintenance services

as described in the Cooperative Purchasing Contract documents attached hereto as **Exhibit A**, which are incorporated herein by reference. As used in this Contract, all references to the City of Chandler shall mean the Town of Gilbert, Arizona.

1.2 Contractor shall comply with all specific requirements and/or options of Gilbert, as specified in **Exhibit B** attached hereto and incorporated herein by reference.

2. Completion of Work. The Contractor shall complete all work per schedule agreed upon by Town.

3. Payment. Payment to the Contractor for the services, materials and/or equipment provided, shall be made in accordance with the price list and terms set forth in the Cooperative Purchasing Contract.

4. Terms of Cooperative Purchasing Contract Apply. All provisions of the Cooperative Purchasing Contract documents are incorporated in and shall apply to this Contract as though fully set forth herein, except as otherwise provided for in this Agreement.

5. Contract Term and Renewal. If funds for this Contract are not appropriated or budgeted by July 1, 2013, Gilbert may terminate this contract by giving written notice to Contractor. Otherwise, the term of this Contract shall commence upon approval and continue through June 30, 2014, with an option of the Town to renew for one (1) additional one (1) year term. If this Contract is renewed, the Contract fee shall be adjusted as provided for in the Cooperative Purchasing Contract. The Purchasing Officer has authority to approve any renewal provided that: (1) the Contract amount does not exceed \$100,000; (2) the original prices remain in effect during the Renewal Term; or (3) the contract unit pricing does not increase or the contract pricing is adjusted pursuant to the terms and conditions of the Cooperative Purchasing Contract. Any renewal shall be contingent on funds being appropriated or budgeted for the renewal term.

6. Certificates of Insurance. All insurance provisions of the Cooperative Purchasing Contract shall apply, including without limitation, the requirement to name the Town as an additional insured. Prior to commencing work under this Contract, Contractor shall furnish the Town with Certificates of Insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s) as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this _____ day of _____, 200__.

TOWN OF GILBERT:

CONTRACTOR:

By: _____
Mayor

By: _____
Title: _____

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Town Attorney

EXHIBIT A

- **EXHIBIT C (WAO-936-2649) VENDOR PRICING**
- **CONTRACT OF OTHER GOVERNMENTAL ENTITY**

EXHIBIT C Price sheet

Categories Available

- 1) Water Treatment and Booster Facilities Pump and Process Equipment Sales and Maintenance.
- 2) Wastewater Facilities and Lift Station Pump and Process Equipment Sales and Maintenance.
- 3) Potable Well, Injection Well, Aquifer Storage and Recovery Well (ASR), Monitor Well, and Leachate recovery well pump and Equipment Sales and Maintenance.
- 4) Chandler Reverse Osmosis Plant Pumps and Process Equipment Sales and Maintenance.

Section 1: Labor

Labor Costs per Hour	Description	Unit of Measure	Unit Cost
1.1	Electrician – Field	\$/Hour	55
1.2	Electrician – Shop	\$/Hour	50
1.3	Laborer – Field	\$/Hour	45
1.4	Laborer – Shop	\$/Hour	50
1.5	Machinist – Field	\$/Hour	50
1.6	Machinist – Shop	\$/Hour	70
1.7	Mechanic – Field	\$/Hour	35
1.8	Mechanic – Shop	\$/Hour	50
1.9	Welder – Field	\$/Hour	55
1.1	Welder – Shop	\$/Hour	30
1.11	Operator – Field	\$/Hour	55
1.12	Supervisor – Field	\$/Hour	55
1.13	Technician – Field	\$/Hour	55
1.14	Multiplier for Overtime, Weekend and Holiday Work	Multiplier	1.5
1.15	Well Video Color w/sidescan (Includes Equipment & labor - Written report and 2 copies of DVD)	\$/well	600

Section 2: Equipment

Type 1 Equipment	(1 hour Mob, 1 Hour Demob Allowed On This Machinery)	Unit of Measure	Unit Cost
2.101	Air Compressor (450 CFM & Smaller)	\$/Hour	100
2.102	Air Compressor (451 CFM & Larger)	\$/Hour	115
2.103	Dump Truck	\$/Hour	20
2.104	Pickup Truck	\$/Hour	20
2.105	Crane Truck	\$/Hour	40
2.106	Pump Service Truck	\$/Hour	20
2.107	Water Truck w/ 1 Man	\$/Hour	50
2.108	Tractor Trailer & Driver	\$/Hour	65
2.109	Portable Steam Cleaner	\$/Hour	20

2.11	Portable Welding Machine	\$/Hour	10
2.111	Concrete Pump	\$/Hour	120

Type 2 Equipment	(2 hour Mob, 2 Hour Demob Allowed On This Machinery)	Unit of Measure	Unit Cost
2.201	Pump Rig, 5 ton - 12 ton	\$/Hour	45
2.202	Pump Rig, 13 -29 ton	\$/Hour	45
2.203	Pump Rig, 30 - 49 ton & Larger with Walking Beam	\$/Hour	
2.204	Pump Rig, 30 - 49 ton & Larger	\$/Hour	45
2.205	Pump Rig, 50 ton & larger with Walking Beam	\$/Hour	
2.206	Pump Rig, 50 ton & larger	\$/Hour	45
2.207	Backhoe	\$/Hour	20
2.208	Skip Loader	\$/Hour	20

Type 3 Equipment	(Mob / Demob for each Item Includes both setup and tear down)	Unit of Measure	Unit Cost
2.301	Cable Tool Drill Rig (20W or 22W)	\$/Hour	85
2.301a	Cable Tool Drill Rig (20W or 22W) Mob / Demob	LS	1500
2.302	Cable Tool Drill Rig (28L or 60L)	\$/Hour	85
2.302a	Cable Tool Drill Rig (28L or 60L) Mob / Demob	LS	1500
2.303	Cable Tool Drill Rig (36L or 48L)	\$/Hour	100
2.303a	Cable Tool Drill Rig (36L or 48L) Mob / Demob	LS	2000
2.304	Test Pump Assembly (0-100 gpm)	\$/Hour	125
2.304a	Test Pump Assembly (0-100 gpm) Mob / Demob	LS	7500
2.305	Test Pump Assembly (101-500 gpm)	\$/Hour	135
2.305a	Test Pump Assembly (101-500 gpm) Mob / Demob	LS	7500
2.306	Test Pump Assembly (1501-2500 gpm)	\$/Hour	145
2.306a	Test Pump Assembly (1501-2500 gpm) Mob / Demob	LS	12000
2.307	Test Pump Assembly (501-1500 gpm)	\$/Hour	145
2.307a	Test Pump Assembly (501-1500 gpm) Mob / Demob	LS	12000
2.308	Test Pump Engine & Fuel (300 HP & Below)	\$/Hour	145
2.308a	Test Pump Engine & Fuel (300 HP & Below) Mob / Demob	LS	12000
2.309	Test Pump Engine & Fuel (301 HP through 500 HP)	\$/Hour	145
2.309a	Test Pump Engine & Fuel (301 HP through 500 HP) Mob / Demob	LS	12000
2.31	Test Pump Engine & Fuel (501 HP through 750 HP)	\$/Hour	160
2.310a	Test Pump Engine & Fuel (501 HP through 750 HP) Mob / Demob	LS	12000
2.311	Test Pump Operator & Fuel (751 HP through 1,000 HP)	\$/Hour	160
2.311a	Test Pump Operator & Fuel (751 HP through 1,000 HP) Mob / Demob	LS	12000

Type 5 Special

Contractor Owned Equipment / Tool Rental	Item Description: (Contractor to add description and unit price of any specialized Contractor Owned equipment not listed above)	Unit of Measure	Unit Cost
	Sand Blast Equipment	\$/Hour	20
	Sonar Jet well Cleaning		10

Section 3: Contractor /
Non OEM Parts and
Equipment
Type 1 - Contractor
Parts / Equipment
Markups

	Unit	
Parts Markup for Items with an invoiced cost of less than \$9,999 / Ea	%	19
Parts Markup for Items with an invoiced cost of Greater than \$10,000 / Ea	%	14
Subcontractor Markup	%	10
Rental Equipment Markup	%	10

Section 4: OEM Parts and Equipment

	% Discount From List Price
Pumps	% Discount From List Price
Grundfos Pumps	37
Simflo Pumps	37
Goulds Pumps	41
Fairbanks Morse Pumps	5
Paco Pumps	MA
Flowserve Pumps	12
ABS	5
American Turbine	36
National	25
American Marsh	34
Motors	% Discount From List Price
G.E.	25
U.S.	5
Centripro	54
Hatachi	46
Water Filters	% Discount From List Price
Lakos	25

6191-81

AMENDMENT NUMBER, THREE
TO AGREEMENT BETWEEN THE CITY OF CHANDLER
AND
WEBER WATER RESOURCES, LLC
FOR WATER AND WASTEWATER EQUIPMENT REPAIR
AGREEMENT NO. WA0-936-2649

Weber

This Amendment # 3 to that certain Agreement between the City of Chandler (CITY) and ~~Webber~~ Water Resources, LLC, Formally Weber Group LLC, (CONTRACTOR) for Water and Wastewater Equipment Repair dated, June 30, 2010 entered into this 17th day of May, 2013.

WHEREAS, The parties entered into contract for one year with provisions to extend up to four additional one year periods;

WHEREAS, The Parties have executed two of the extensions available

WHEREAS, the parties have agreed to execute the third one year extension;

WHEREAS, the contractor has changed its' name to Webber Water resources LLC

NOW THEREFORE, the parties agree as follows:

1. The contract Price, Section 4.1, is revised to an amount not to exceed one million six hundred and thirty thousand dollars (\$1,630,000) when added to companion agreements.
2. This contract Tem, Section 5.1, is extended for a one-year period, through June 30, 2014,
3. The contractor name is changed to Weber Water resources, LLC

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this

1 day of July, 2013.

CITY OF CHANDLER:

By: [Signature]

Mayor

CONSULTANT:

By: [Signature]

Title: President

APPROVED AS TO FORM:

[Signature]
City Attorney

ATTEST: (If corporation)

Secretary

ATTEST:

[Signature]
City Clerk



WITNESS: (If individual or Partnership)

[SEAL]

WATER AND WASTEWATER EQUIPMENT REPAIR
AGREEMENT NO.: WA0-936-2649

THIS AGREEMENT is made and entered into this ~~31st~~ day of ~~June~~, 2010, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Weber Group LC, an Arizona Corporation, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR:

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Cost Center Manager /designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

2. SCOPE OF WORK: CONTRACTOR shall provide repair of water and wastewater equipment all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.

- 2.1. **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2. **Licenses.** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.
- 2.3. **Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.
- 2.4. **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.
- 2.4.1. Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all

Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

- 2.4.2. A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.4.3. The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.4. The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.
- 2.4.5. The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.4.6. In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.4.7. In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.5. **One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all work performed and material supplied pursuant to this Contract.
- 3. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
- 3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
- 3.4. **Property of CITY.** Any materials, including reports, computer programs and other

deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.

4. PRICE AND TAXES:

- 4.1. Price.** CITY shall pay to CONTRACTOR an amount not to exceed one ~~million three hundred thousand dollars (\$1,300,000)~~ when added to companion agreements for the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.
- 4.2. Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 4.3. Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its services concurrent with a published price reduction made to other customers.
- 4.4. Estimated Quantities.** The quantities shown on Exhibit C (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.
- 4.5. Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.
- 4.6.** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.7. IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.

5. TERM:

- 5.1.** The contract term is for a one year beginning July 1, 2010 subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five-years. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.
- 5.2.** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.

6. COOPERATIVE USE AND EMERGENCY PURCHASES:

- 6.1. Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
- 6.2. Emergency Purchases:** CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7. CITY'S CONTRACTUAL REMEDIES:

- 7.1. Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
- 7.2. Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 7.3.** If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4. Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.5. Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6. Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8. TERMINATION:

- 8.1. Termination for Convenience.** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such

termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

8.2. Termination for Cause. City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
- 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
- 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property;
- 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.

8.3. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

8.4. Gratuities. CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.

8.5. Suspension or Debarment. CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public

procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.

- 8.6. Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.8. Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
- 9. FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
- 10. DISPUTE RESOLUTION:**
- 10.1. Alternative Dispute Resolution.** The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.
- 10.2. Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.3. Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.4. Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.
- 11. INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend,

indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. INSURANCE:

12.1. Insurance Representations and Requirement.

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance – Certificates of Insurance.

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve

CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage.

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.
- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

12.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$500,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of ~~\$1,000,000~~ per occurrence (or 10% per occurrence) and an aggregate of ~~\$2,000,000~~ (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001,

and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

12.5. Automobile Liability.

CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than ~~\$1,000,000~~ each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

12.6. Worker's Compensation and Employer's Liability.

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than ~~\$1,000,000~~ for each accident, ~~\$1,000,000~~ disease coverage for each employee, and ~~\$1,000,000~~ disease policy limit.

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

- 13. NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY

Contract Administrator:
Contact: Mike Mandt
Mailing Address: P. Box 4008 MS 901
Physical Address: 249 E. Chicago St.
City, State, Zip: Chandler, AZ 85244-4008
Phone: 480-782-2406
FAX: 480-782-2410

In the case of the CONTRACTOR

Firm Name: Weber Group LC
Contact: Gabe Tregaskes
Address: 16825 S. Webber Drive
City, State, Zip: Chandler, AZ 85226
Phone: 480-961-1141
FAX: 480-961-0290

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. CONFLICT OF INTEREST:

- 14.1. No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests

were disclosed in CONTRACTOR'S proposal to the CITY.

14.2. Kickback Termination. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

14.3. No Conflict: CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. GENERAL TERMS:

15.1. Ownership. All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.

15.2. Entire Agreement. This Agreement, including Exhibits A, B and C attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

15.3. Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

15.4. Assignment. Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.

15.5. Amendments. The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.

15.6. Independent CONTRACTOR. The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

15.7. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no

usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

- 15.8. **Authority.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 30
day of June, 2010.

FOR THE CITY OF CHANDLER


MAYOR

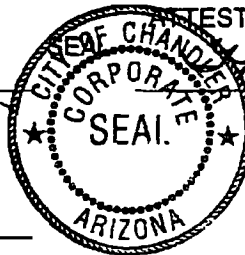
FOR THE CONTRACTOR

By: Fred Tregaskes
Signature FRED TREGASKES,
PRESIDENT

ATTEST:


City Clerk

ATTEST: If Corporation



Theresa E. Merx
Secretary THERESA E. MERX

Approved as to form:

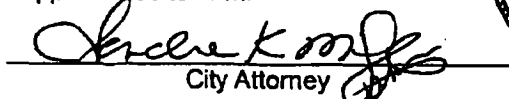

City Attorney

EXHIBIT A

Contractor Immigration Warranty To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number:	MU0-988-2734
Name (as listed in the contract):	WEBER GROUP LC
Street Name and Number:	16825 S. WEBER DR
City: CHANDLER State: AZ Zip Code: 85226	

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:

Fred Tregaskes

Printed Name: FRED TREGASKES

Title: PRESIDENT

Date (month/day/year): 5-27-10

EXHIBIT B
Scope of Work

1. SCOPE

The purpose of this contract is to provide equipment repair for various City departments, which currently include Water Production, Wastewater Treatment, Wastewater Collection, Reverse Osmosis, Solid Waste and Streets. The contract is separated into four categories as indicated below.

1.1 Water Treatment and Booster Facilities Pump and Process Equipment Sales and Maintenance

This work will take place at the City's Pecos Water Treatment Facility and reservoir / booster stations at various locations throughout the City. This category will include work on all types of pumps, valves and process equipment common to water treatment and booster station facilities.

1.2 Wastewater Treatment and Lift Station Pump and Process Equipment Sales and Maintenance

This work will take place at the City's Airport Water Reclamation Facility, Lone Butte Wastewater Facility, Ocotillo Water Reclamation Facility, Lift Stations and Wastewater Facilities at various locations throughout the City. This category will include work on all types of pumps, valves and process equipment common to wastewater treatment and lift station facilities.

1.3 Potable Well, Aquifer Storage and Recovery Well (ASR), Monitor Well, and Leachate Recovery Well Pump and Equipment Sales and Maintenance

This work will take place at various well locations through out the City. This category will include work on both line shaft and submersible type well pump systems, well maintenance, rehabilitation and repair, as well as work on all types of pumps, valves and process equipment common to potable, ASR and monitor well and leachate recovery facilities.

1.4 Chandler Reverse Osmosis Plant Pumps and Process Equipment Sales and Maintenance

This work will take place at the City's Reverse Osmosis Facility. This category will include work on all types of pumps, valves and process equipment common to Industrial reverse osmosis water treatment facilities.

2. RESPONSE TIME

2.1. Water Treatment and Booster Facilities Pump and Process Equipment Sales and Maintenance

CONTRACTOR shall commence work within 5-calendar days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 4 days of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

2.2. Wastewater Treatment and Lift Station Pump and Process Equipment Sales and Maintenance

CONTRACTOR shall commence work within 5 days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

2.3. Potable Well, Aquifer Storage and Recovery Well (ASR), Monitor Well, and Leachate Recovery Well Pump and Equipment Sales and Maintenance

CONTRACTOR shall commence work within 10 days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

2.4. Chandler Reverse Osmosis Plant Pumps and Process Equipment Sales and Maintenance

CONTRACTOR shall commence work within 5-calendar days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 4 days of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

3. WORK ESTIMATES AND COMPLETION TIME

Prior to CONTRACTOR performing any repair work, CONTRACTOR will be required to provide CITY a written report including condition of equipment, recommended repairs and cost of repairs. CONTRACTOR will be allowed to remove and disassemble the equipment prior to providing CITY written estimate. The written estimate will be required 72 hours after equipment has been removed.

CONTRACTOR will be required to repair and reinstall equipment within 10 working days

from approval of the work. This requirement will be adjusted if parts delivery exceeds 10 days.

4. REPLACEMENT PARTS

CITY may purchase replacement pumps, motors, and other related equipment from CONTRACTOR. The price to be paid to CONTRACTOR by CITY will be billed at the invoice price multiplied by the factor listed on Exhibit C. The factor listed will be CONTRACTOR's compensation for handling. CONTRACTOR shall include invoices for any parts for which he is seeking reimbursement. All replacement parts supplied must meet all manufacturers' specifications.

CONTRACTOR may be required to provide pricing of repair parts for specific jobs prior to CITY authorizing purchase of the parts from CONTRACTOR. CITY reserves the right to purchase pumps, motors, and other related equipment directly from the manufacturer or from other vendors if it is in CITY's best interest.

5. SUPERVISION BY THE CONTRACTOR

CONTRACTOR will supervise and direct all work. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures performed.

CONTRACTOR will employ and maintain on the work a qualified supervisor or superintendent, which shall be designated in writing by CONTRACTOR as CONTRACTOR's representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as of given to CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

6. INSPECTION

CITY Staff may monitor the work site and report to the Contract Administrator as to the progress of the Work, the manner in which it is being performed, and if material furnished and work performed by CONTRACTOR fails to fulfill the requirements of the Contract. CITY Staff may direct the attention of CONTRACTOR to such failure or infringement but such inspection shall not relieve CONTRACTOR from any obligation to furnish acceptable materials or to provide completed work that complies with the Contract.

In the case of any dispute arising between CITY staff and the CONTRACTOR as to material furnished or the manner of performing work, CITY Staff shall have the authority to reject materials or suspend the work until the question and issue can be resolved

7. VIBRATION ANALYSIS

Repairs performed under this contract will be subject to vibration analysis and must comply with manufacturers specifications.

8. SAFETY PROCEDURES

CONTRACTOR will be responsible for coordinating their activities with CITY. Prior to the start of work, CONTRACTOR and CITY will perform a Pre-job briefing to discuss and plan for dealing with relevant safety issues such as lockout tag-out and confined space

exposures. CONTRACTOR will be responsible to properly lockout tag- out electrical hazards and ensure there is a plan to deal with other work related hazards.

9. DISINFECTION

CONTRACTOR will be responsible for disinfection of all potable water equipment with NSF approved products prior to and during installation in accordance with Maricopa County Health Code, Chapter V, Water Supply R9-8-266.

10. CLEANUP

CONTRACTOR shall remove all debris and other materials from the work site after the completion of work.

11. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

CONTRACTOR shall properly secure the work site and protect all finished or partially finished work.

12. DISPOSAL OF WASTE

CONTRACTOR will be responsible for disposal of all waste products including but not limited to oil baled from a well, debris, etc. at a legal off-site location. ANY DISPOSAL OF WASTE PRODUCTS OR UNUSED MATERIALS SHALL CONFORM TO APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS. Copies of disposal documentation shall be provided to CITY upon request.

13. WRITTEN COMPLETION REPORTS

CONTRACTOR shall submit a written completion report to CITY within 30 days of completion of work, which details work completed. The report for pump repair shall include depth of setting, bowl size and make, tube and shaft size and make, depth of well water level and other pertinent information. **The report shall include a daily log that accounts for all hours and materials billed to the job.** CITY will not make payment prior to receiving this report.

14. HOURLY RATES

CONTRACTOR will charge hourly rates listed in Exhibit C for time on scene only. Any work on Saturdays, Sundays or Holidays will require advance approval from CITY.

EXHIBIT B
SPECIFIC REQUIREMENTS/OPTIONS OF TOWN

Notices: All notices required under the Contract shall be sent to:

Purchasing Administrator
Town of Gilbert
50 E. Civic Center Drive
Gilbert, Arizona 85296

Immigration Law Compliance Warranty: As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor verifies the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. Gilbert at its option may terminate the Contract after the third violation. Contractor shall not be deemed in material breach of this Contract if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Gilbert retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

Emergency Contact: Gilbert is an emergency response organization. Contractor services or supplies may be required in case of an emergency involving a sudden, immediate threat of danger to the public health, welfare or property in Gilbert ("local emergency") or in the case where the Mayor of Gilbert, the mayor or governing body of another municipality in Maricopa County, the Maricopa County Board of Supervisors, the State, or the President of the U.S. has declared an emergency ("State of Emergency"). In the event of a local emergency or State of Emergency, Gilbert may require Contractor to provide services or supplies as rapidly as possible and to such locations as directed by Gilbert when necessary to protect the public health and welfare and/or property. Contractor shall not be required to respond to the extent response is not feasible due to Acts of God or other factors beyond its control. Contractor shall provide the designated Gilbert Emergency Management Coordinator at (480) 503-6333 and the designated Gilbert representative with a contact point (name, cell phone number, e-mail and facsimile number) who can be reached on short notice so that effective response can be initiated.

Equal Treatment of Workers: Contractor shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of performance under the Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration ("OSHA") and the Fair Labor Standards Act ("FLSA"). Contractor shall protect and indemnify Gilbert and its representatives against any claim or liability arising from or based on the violation of such, whether by Contractor or its employees.]

AGREEMENT NO. 2014-4108-0052
TO PROVIDE SERVICES/SUPPLIES PURSUANT TO A
COOPERATIVE PURCHASING CONTRACT

This Agreement is made and entered into by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter designated as "Gilbert" and Keller Electrical Inc., an Arizona corporation hereinafter designated as the "Contractor."

Recitals:

A. Contractor has contracted with the City of Chandler to provide pump repair and deep well maintenance services, materials and/or equipment pursuant to Contract No. WAO-936-2649 (the Cooperative Purchasing Contract); and

B. Pursuant to A.R.S. § 41-2631 et seq. and Gilbert Municipal Code § 2-357, Gilbert has authority to utilize cooperative purchasing contracts and engage contractors under the terms thereof.

CONTRACTOR AND GILBERT, FOR THE CONSIDERATION
HEREINAFTER SET FORTH, PROMISE, COVENANT AND AGREE AS FOLLOWS:

1. Scope of Work.

1.1 Contractor shall provide the following services, materials and/or equipment:

Pump repair and deep well maintenance services

as described in the Cooperative Purchasing Contract documents attached hereto as **Exhibit A**, which are incorporated herein by reference. As used in this Contract, all references to the City of Chandler shall mean the Town of Gilbert, Arizona.

1.2 Contractor shall comply with all specific requirements and/or options of Gilbert, as specified in **Exhibit B** attached hereto and incorporated herein by reference.

2. Completion of Work. The Contractor shall complete all work per schedule agreed upon by Town.

3. Payment. Payment to the Contractor for the services, materials and/or equipment provided, shall be made in accordance with the price list and terms set forth in the Cooperative Purchasing Contract.

4. Terms of Cooperative Purchasing Contract Apply. All provisions of the Cooperative Purchasing Contract documents are incorporated in and shall apply to this Contract as though fully set forth herein, except as otherwise provided for in this Agreement.

5. Contract Term and Renewal. If funds for this Contract are not appropriated or budgeted by July 1, 2013, Gilbert may terminate this contract by giving written notice to Contractor. Otherwise, the term of this Contract shall commence upon approval and continue through June 30, 2014, with an option of the Town to renew for one (1) additional one (1) year term. If this Contract is renewed, the Contract fee shall be adjusted as provided for in the Cooperative Purchasing Contract. The Purchasing Officer has authority to approve any renewal provided that: (1) the Contract amount does not exceed \$100,000; (2) the original prices remain in effect during the Renewal Term; or (3) the contract unit pricing does not increase or the contract pricing is adjusted pursuant to the terms and conditions of the Cooperative Purchasing Contract. Any renewal shall be contingent on funds being appropriated or budgeted for the renewal term.

6. Certificates of Insurance. All insurance provisions of the Cooperative Purchasing Contract shall apply, including without limitation, the requirement to name the Town as an additional insured. Prior to commencing work under this Contract, Contractor shall furnish the Town with Certificates of Insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s) as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this _____ day of _____, 200__.

TOWN OF GILBERT:

CONTRACTOR:

By: _____
Mayor

By: _____
Title: _____

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Town Attorney

EXHIBIT A

- **EXHIBIT C (WAO-936-2649) VENDOR PRICING**
- **CONTRACT OF OTHER GOVERNMENTAL ENTITY**

EXHIBIT C Price sheet

Categories Available

- 1) Water Treatment and Booster Facilities Pump and Process Equipment Sales and Maintenance.
- 2) Wastewater Facilities and Lift Station Pump and Process Equipment Sales and Maintenance.
- 3) Potable Well, Injection Well, Aquifer Storage and Recovery Well (ASR), Monitor Well, and Leachate recovery well pump and Equipment Sales and Maintenance.
- 4) Chandler Reverse Osmosis Plant Pumps and Process Equipment Sales and Maintenance.

Section 1: Labor

Keller Electrical

Labor Costs per Hour	Description	Unit of Measure	Unit Cost
1.1	Electrician – Field	\$/Hour	48
1.2	Electrician – Shop	\$/Hour	48
1.3	Laborer – Field	\$/Hour	45
1.4	Laborer – Shop	\$/Hour	45
1.5	Machinist – Field	\$/Hour	45
1.6	Machinist – Shop	\$/Hour	45
1.7	Mechanic – Field	\$/Hour	45
1.8	Mechanic – Shop	\$/Hour	45
1.9	Welder – Field	\$/Hour	45
1.1	Welder – Shop	\$/Hour	45
1.11	Operator – Field	\$/Hour	65
1.12	Supervisor – Field	\$/Hour	65
1.13	Technician – Field	\$/Hour	45
1.14	Multiplier for Overtime, Weekend and Holiday Work	Multiplier	1.35
1.15	Well Video Color w/sidescan (Includes Equipment & labor - Written report and 2 copies of DVD)	\$/well	

Section 2: Equipment

Section 3: Contractor / Non OEM Parts and Equipment

Type 1 - Contractor Parts / Equipment Markups	Unit	
Parts Markup for Items with an invoiced cost of less than \$9,999 / Ea	%	12
Parts Markup for Items with an invoiced cost of Greater than \$10,000 / Ea	%	12
Subcontractor Markup	%	12
Rental Equipment Markup	%	10

Section 4: OEM Parts and Equipment

% Discount From List Price

Motors

% Discount From List Price

U.S.

Current List 10

18-1615

AMENDMENT NUMBER, THREE
TO AGREEMENT BETWEEN THE CITY OF CHANDLER
AND
KELLER ELECTRICAL INC
FOR WATER AND WASTEWATER EQUIPMENT REPAIR
AGREEMENT NO. WAO-936-2649

This Amendment # 3 to that certain Agreement between the City Of Chandler (CITY) and Keller Electrical Inc. (CONTRACTOR) for Water and Wastewater Equipment Repair dated, June 30, 2010 entered into this 1 day of July, 2013.

WHEREAS, The parties entered into contract for one year with provisions to extend up to four additional one year periods;

WHEREAS, The Parties have executed two of the extensions available

WHEREAS, the parties have agreed to execute the third one year extension;

NOW THEREFORE, the parties agree as follows:

1. The contract Price, Section 4.1, is revised to an amount not to exceed one million six hundred and thirty thousand dollars (\$1,630,000) when added to companion agreements.
2. This contract Term, Section 5.1, is extended for a one-year period, through June 30, 2014,

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this 1 day of July, 2013.

CITY OF CHANDLER:

By: [Signature]

Mayor

CONSULTANT:

By: [Signature]

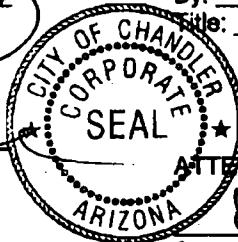
Title: President & CEO

APPROVED AS TO FORM:

[Signature]
City Attorney

ATTEST:

[Signature]
City Clerk



ATTEST: (If corporation)

[Signature]
Secretary

WITNESS: (If individual or Partnership)

[SEAL]

WATER AND WASTEWATER EQUIPMENT REPAIR
AGREEMENT NO.: WA0-936-2649

THIS AGREEMENT is made and entered into this ~~28th~~ day of ~~June~~, 2000, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Keller Electrical Inc., an Arizona Corporation, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR:

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Cost Center Manager /designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

2. SCOPE OF WORK: CONTRACTOR shall provide repair of water and wastewater equipment all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.

- 2.1. **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2. **Licenses.** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.
- 2.3. **Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.
- 2.4. **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirement.
 - 2.4.1. Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all

Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

- 2.4.2. A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.4.3. The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.4. The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.
- 2.4.5. The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.4.6. In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.4.7. In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.5. **One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all work performed and material supplied pursuant to this Contract.
- 3. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
- 3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
- 3.4. **Property of CITY.** Any materials, including reports, computer programs and other

deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.

4. TAXES:

- 4.1. Price.** CITY shall pay to CONTRACTOR an amount not to exceed ~~one million three hundred thousand dollars (\$1,300,000)~~ when added to companion agreements for the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.
- 4.2. Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 4.3. Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its services concurrent with a published price reduction made to other customers.
- 4.4. Estimated Quantities.** The quantities shown on Exhibit C (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.
- 4.5. Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.
- 4.6.** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.7. IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.

5. TERM:

- 5.1.** The contract term is for a one year beginning July 1, 2010 subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five-years. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.
- 5.2.** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.

6. COOPERATIVE USE AND EMERGENCY PURCHASES:

- 6.1. Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
- 6.2. Emergency Purchases.** CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7. CITY'S CONTRACTUAL REMEDIES:

- 7.1. Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
- 7.2. Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 7.3.** If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4. Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.5. Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6. Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8. TERMINATION:

- 8.1. Termination for Convenience.** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such

termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

8.2. Termination for Cause. City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
- 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
- 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property;
- 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.

8.3. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

8.4. Gratuities. CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.

8.5. Suspension or Debarment. CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public

procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.

- 8.6. **Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **DISPUTE RESOLUTION:**
- 10.1. **Alternative Dispute Resolution.** The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.
- 10.2. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.3. **Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.4. **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend,

indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. INSURANCE:

12.1. Insurance Representations and Requirements:

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance – Certificates of Insurance.

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve

CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage.

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.
- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

12.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$500,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001,

and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

12.5. Automobile Liability.

CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

12.6. Worker's Compensation and Employer's Liability.

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

- 13. NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY		In the case of the CONTRACTOR	
Contract Administrator:		Firm Name:	Keller Electrical Industries Inc.
Contact:	Mike Mandt	Contact:	Christopher Lynch
Mailing Address:	P. Box 4008 MS 901	Address:	4206 East Winslow Avenue
Physical Address:	249 E Chicago St	City, State, Zip	Phoenix AZ 85040
City, State, Zip	Chandler AZ 85244-4008	Phone:	602-437-3015
Phone:	480-782-2406	FAX:	602-437-8163
FAX:	480-782-2410		

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. CONFLICT OF INTEREST:

- 14.1. No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests

were disclosed in CONTRACTOR'S proposal to the CITY.

14.2. Kickback Termination. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

14.3. No Conflict. CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. GENERAL TERMS:

15.1. Ownership. All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.

15.2. Entire Agreement. This Agreement, including Exhibits A, B and C attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

15.3. Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

15.4. Assignment. Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.

15.5. Amendments. The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.

15.6. Independent CONTRACTOR. The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

15.7. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no

usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

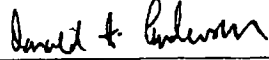
- 15.8. **Authority.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this
30 day of June, 2010

FOR THE CITY OF CHANDLER


MAYOR

FOR THE CONTRACTOR

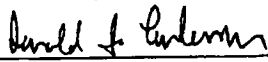
By: 
Signature

ATTEST:

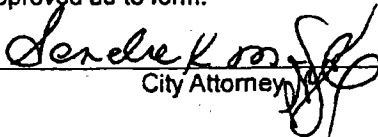

City Clerk

SEAL

ATTEST: If Corporation


Secretary

Approved as to form:


City Attorney

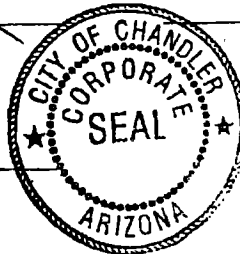


EXHIBIT A

Contractor Immigration Warranty To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number:	MU0-988-2734
Name (as listed in the contract):	Keller Electrical Industries
Street Name and Number:	4206 E. Winslow Ave.
City: Phoenix	State: AZ Zip Code: 85040

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:

Donald J. Anderson

Printed Name: Donald J. Anderson

Title: President & CEO

Date (month/day/year): 6/4/10

EXHIBIT B Scope of Work

1. SCOPE

The purpose of this contract is to provide equipment repair for various City departments, which currently include Water Production, Wastewater Treatment, Wastewater Collection, Reverse Osmosis, Solid Waste and Streets. The contract is separated into four categories as indicated below.

1.1 Water Treatment and Booster Facilities Pump and Process Equipment Sales and Maintenance

This work will take place at the City's Pecos Water Treatment Facility and reservoir / booster stations at various locations throughout the City. This category will include work on all types of pumps, valves and process equipment common to water treatment and booster station facilities.

1.2 Wastewater Treatment and Lift Station Pump and Process Equipment Sales and Maintenance

This work will take place at the City's Airport Water Reclamation Facility, Lone Butte Wastewater Facility, Ocotillo Water Reclamation Facility, Lift Stations and Wastewater Facilities at various locations throughout the City. This category will include work on all types of pumps, valves and process equipment common to wastewater treatment and lift station facilities.

1.3 Potable Well, Aquifer Storage and Recovery Well (ASR), Monitor Well, and Leachate Recovery Well Pump and Equipment Sales and Maintenance

This work will take place at various well locations through out the City. This category will include work on both line shaft and submersible type well pump systems, well maintenance, rehabilitation and repair, as well as work on all types of pumps, valves and process equipment common to potable, ASR and monitor well and leachate recovery facilities.

1.4 Chandler Reverse Osmosis Plant Pumps and Process Equipment Sales and Maintenance

This work will take place at the City's Reverse Osmosis Facility. This category will include work on all types of pumps, valves and process equipment common to industrial reverse osmosis water treatment facilities.

2. RESPONSE TIME

2.1 Water Treatment and Booster Facilities Pump and Process Equipment Sales and Maintenance

CONTRACTOR shall commence work within 5-calendar days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 4 days of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

2.2 Wastewater Treatment and Lift Station Pump and Process Equipment Sales and Maintenance

CONTRACTOR shall commence work within 5 days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

2.3 Potable Well, Aquifer Storage and Recovery Well (ASR), Monitor Well, and Leachate Recovery Well Pump and Equipment Sales and Maintenance

CONTRACTOR shall commence work within 10 days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

2.4 Chandler Reverse Osmosis Plant Pumps and Process Equipment Sales and Maintenance

CONTRACTOR shall commence work within 5-calendar days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 4 days of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

3. WORK ESTIMATES AND COMPLETION TIME

Prior to CONTRACTOR performing any repair work, CONTRACTOR will be required to provide CITY a written report including condition of equipment, recommended repairs and cost of repairs. CONTRACTOR will be allowed to remove and disassemble the equipment prior to providing CITY written estimate. The written estimate will be required 72 hours after equipment has been removed.

CONTRACTOR will be required to repair and reinstall equipment within 10 working days

from approval of the work. This requirement will be adjusted if parts delivery exceeds 10 days.

4. REPLACEMENT PARTS

CITY may purchase replacement pumps, motors, and other related equipment from CONTRACTOR. The price to be paid to CONTRACTOR by CITY will be billed at the invoice price multiplied by the factor listed on Exhibit C. The factor listed will be CONTRACTOR's compensation for handling. CONTRACTOR shall include invoices for any parts for which he is seeking reimbursement. All replacement parts supplied must meet all manufacturers' specifications.

CONTRACTOR may be required to provide pricing of repair parts for specific jobs prior to CITY authorizing purchase of the parts from CONTRACTOR. CITY reserves the right to purchase pumps, motors, and other related equipment directly from the manufacturer or from other vendors if it is in CITY's best interest.

5. SUPERVISION BY THE CONTRACTOR

CONTRACTOR will supervise and direct all work. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures performed.

CONTRACTOR will employ and maintain on the work a qualified supervisor or superintendent, which shall be designated in writing by CONTRACTOR as CONTRACTOR's representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as if given to CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

6. INSPECTION

CITY Staff may monitor the work site and report to the Contract Administrator as to the progress of the Work, the manner in which it is being performed, and if material furnished and work performed by CONTRACTOR fails to fulfill the requirements of the Contract. CITY Staff may direct the attention of CONTRACTOR to such failure or infringement but such inspection shall not relieve CONTRACTOR from any obligation to furnish acceptable materials or to provide completed work that complies with the Contract.

In the case of any dispute arising between CITY staff and the CONTRACTOR as to material furnished or the manner of performing work, CITY Staff shall have the authority to reject materials or suspend the work until the question and issue can be resolved

7. VIBRATION ANALYSIS

Repairs performed under this contract will be subject to vibration analysis and must comply with manufacturers specifications.

8. SAFETY PROCEDURES

CONTRACTOR will be responsible for coordinating their activities with CITY. Prior to the start of work, CONTRACTOR and CITY will perform a Pre-job briefing to discuss and plan for dealing with relevant safety issues such as lockout tag-out and confined space

exposures. CONTRACTOR will be responsible to properly lockout tag- out electrical hazards and ensure there is a plan to deal with other work related hazards.

9. DISINFECTION

CONTRACTOR will be responsible for disinfection of all potable water equipment with NSF approved products prior to and during installation in accordance with Maricopa County Health Code, Chapter V, Water Supply R9-8-266.

10. CLEANUP

CONTRACTOR shall remove all debris and other materials from the work site after the completion of work.

11. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

CONTRACTOR shall properly secure the work site and protect all finished or partially finished work.

12. DISPOSAL OF WASTE

CONTRACTOR will be responsible for disposal of all waste products including but not limited to oil baled from a well, debris, etc. at a legal off-site location. ANY DISPOSAL OF WASTE PRODUCTS OR UNUSED MATERIALS SHALL CONFORM TO APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS. Copies of disposal documentation shall be provided to CITY upon request.

13. WRITTEN COMPLETION REPORTS

CONTRACTOR shall submit a written completion report to CITY within 30 days of completion of work, which details work completed. The report for pump repair shall include depth of setting, bowl size and make, tube and shaft size and make, depth of well water level and other pertinent information. **The report shall include a daily log that accounts for all hours and materials billed to the job.** CITY will not make payment prior to receiving this report.

14. HOURLY RATES

CONTRACTOR will charge hourly rates listed in Exhibit C for time on scene only. Any work on Saturdays, Sundays or Holidays will require advance approval from CITY.

EXHIBIT B
SPECIFIC REQUIREMENTS/OPTIONS OF TOWN

Notices: All notices required under the Contract shall be sent to:

Purchasing Administrator
Town of Gilbert
50 E. Civic Center Drive
Gilbert, Arizona 85296

Immigration Law Compliance Warranty: As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor verifies the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. Gilbert at its option may terminate the Contract after the third violation. Contractor shall not be deemed in material breach of this Contract if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Gilbert retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

Emergency Contact: Gilbert is an emergency response organization. Contractor services or supplies may be required in case of an emergency involving a sudden, immediate threat of danger to the public health, welfare or property in Gilbert ("local emergency") or in the case where the Mayor of Gilbert, the mayor or governing body of another municipality in Maricopa County, the Maricopa County Board of Supervisors, the State, or the President of the U.S. has declared an emergency ("State of Emergency"). In the event of a local emergency or State of Emergency, Gilbert may require Contractor to provide services or supplies as rapidly as possible and to such locations as directed by Gilbert when necessary to protect the public health and welfare and/or property. Contractor shall not be required to respond to the extent response is not feasible due to Acts of God or other factors beyond its control. Contractor shall provide the designated Gilbert Emergency Management Coordinator at (480) 503-6333 and the designated Gilbert representative with a contact point (name, cell phone number, e-mail and facsimile number) who can be reached on short notice so that effective response can be initiated.

Equal Treatment of Workers: Contractor shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of performance under the Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration ("OSHA") and the Fair Labor Standards Act ("FLSA"). Contractor shall protect and indemnify Gilbert and its representatives against any claim or liability arising from or based on the violation of such, whether by Contractor or its employees.]

AGREEMENT NO. 2014-4108-0057
TO PROVIDE SERVICES/SUPPLIES PURSUANT TO A
COOPERATIVE PURCHASING CONTRACT

This Agreement is made and entered into by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter designated as "Gilbert" and Layne Christensen Company, a Wisconsin corporation hereinafter designated as the "Contractor."

Recitals:

A. Contractor has contracted with the City of Chandler to provide pump repair and deep well maintenance services, materials and/or equipment pursuant to Contract No. WAO-936-2649 (the Cooperative Purchasing Contract); and

B. Pursuant to A.R.S. § 41-2631 et seq. and Gilbert Municipal Code § 2-357, Gilbert has authority to utilize cooperative purchasing contracts and engage contractors under the terms thereof.

CONTRACTOR AND GILBERT, FOR THE CONSIDERATION
HEREINAFTER SET FORTH, PROMISE, COVENANT AND AGREE AS FOLLOWS:

1. Scope of Work.

1.1 Contractor shall provide the following services, materials and/or equipment:

Pump repair and deep well maintenance services

as described in the Cooperative Purchasing Contract documents attached hereto as **Exhibit A**, which are incorporated herein by reference. As used in this Contract, all references to the City of Chandler shall mean the Town of Gilbert, Arizona.

1.2 Contractor shall comply with all specific requirements and/or options of Gilbert, as specified in **Exhibit B** attached hereto and incorporated herein by reference.

2. Completion of Work. The Contractor shall complete all work per schedule agreed upon by Town.

3. Payment. Payment to the Contractor for the services, materials and/or equipment provided, shall be made in accordance with the price list and terms set forth in the Cooperative Purchasing Contract.

4. Terms of Cooperative Purchasing Contract Apply. All provisions of the Cooperative Purchasing Contract documents are incorporated in and shall apply to this Contract as though fully set forth herein, except as otherwise provided for in this Agreement.

5. Contract Term and Renewal. If funds for this Contract are not appropriated or budgeted by July 1, 2013, Gilbert may terminate this contract by giving written notice to Contractor. Otherwise, the term of this Contract shall commence upon approval and continue through June 30, 2014, with an option of the Town to renew for one (1) additional one (1) year term. If this Contract is renewed, the Contract fee shall be adjusted as provided for in the Cooperative Purchasing Contract. The Purchasing Officer has authority to approve any renewal provided that: (1) the Contract amount does not exceed \$100,000; (2) the original prices remain in effect during the Renewal Term; or (3) the contract unit pricing does not increase or the contract pricing is adjusted pursuant to the terms and conditions of the Cooperative Purchasing Contract. Any renewal shall be contingent on funds being appropriated or budgeted for the renewal term.

6. Certificates of Insurance. All insurance provisions of the Cooperative Purchasing Contract shall apply, including without limitation, the requirement to name the Town as an additional insured. Prior to commencing work under this Contract, Contractor shall furnish the Town with Certificates of Insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s) as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this _____ day of _____, 200 ____.

TOWN OF GILBERT:

CONTRACTOR:

By: _____
Mayor

By: _____
Title: _____

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Town Attorney

EXHIBIT A

- **EXHIBIT C (WAO-936-2649) VENDOR PRICING**
- **CONTRACT OF OTHER GOVERNMENTAL ENTITY**

EXHIBIT C Price Sheet

Categories Available

- 1) Water Treatment and Booster Facilities Pump and Process Equipment Sales and Maintenance.
- 3) Potable Well, Injection Well, Aquifer Storage and Recovery Well (ASR), Monitor Well, and Leachate recovery well pump and Equipment Sales and Maintenance.

Section 1: Labor

Layne Christensen

Labor Hour	Costs per	Description	Unit of Measure	Unit Cost
1.1		Electrician - Field	\$/Hour	63
1.2		Electrician - Shop	\$/Hour	63
1.3		Laborer - Field	\$/Hour	45
1.4		Laborer - Shop	\$/Hour	45
1.5		Machinist - Field	\$/Hour	63
1.6		Machinist - Shop	\$/Hour	63
1.7		Mechanic - Field	\$/Hour	45
1.8		Mechanic - Shop	\$/Hour	45
1.9		Welder - Field	\$/Hour	63
1.1		Welder - Shop	\$/Hour	63
1.11		Operator - Field	\$/Hour	63
1.12		Supervisor - Field	\$/Hour	63
1.13		Technician - Field	\$/Hour	63
1.14		Multiplier for Overtime, Weekend and Holiday Work	Multiplier	1.2
1.15		Well Video Color w/sidescan (Includes Equipment & labor - Written report and 2 copies of DVD)	\$/well	700

Section Equipment

2:

Type 1 Equipment	(1 hour Mob, 1 Hour Demob Allowed On This Machinery)	Unit of Measure	Unit Cost
2.101	Air Compressor (450 CFM & Smaller)	\$/Hour	70
2.102	Air Compressor (451 CFM & Larger)	\$/Hour	85
2.103	Dump Truck	\$/Hour	109
2.104	Pickup Truck	\$/Hour	45
2.105	Crane Truck	\$/Hour	55
2.106	Pump Service Truck	\$/Hour	45
2.107	Water Truck w/ 1 Man	\$/Hour	109
2.108	Tractor Trailer & Driver	\$/Hour	118
2.109	Portable Steam Cleaner	\$/Hour	18
2.11	Portable Welding Machine	\$/Hour	36

2.111	Concrete Pump	\$/Hour	36
(2 hour Mob, 2 Hour Demob Allowed On This Machinery)			
Type 2 Equipment		Unit of Measure	Unit Cost
2.201	Pump Rig, 5 ton - 12 ton	\$/Hour	54
2.202	Pump Rig, 13 -29 ton	\$/Hour	80
2.203	Pump Rig, 30 - 49 ton & Larger with Walking Beam	\$/Hour	100
2.204	Pump Rig, 30 - 49 ton & Larger	\$/Hour	100
2.205	Pump Rig, 50 ton & larger with Walking Beam	\$/Hour	100
2.206	Pump Rig, 50 ton & larger	\$/Hour	100
2.207	Backhoe	\$/Hour	45
2.208	Skip Loader	\$/Hour	45
(Mob / Demob for each Item Includes both setup and tear down)			
Type 3 Equipment		Unit of Measure	Unit Cost
2.304	Test Pump Assembly (0-100 gpm)	\$/Hour	63
2.304a	Test Pump Assembly (0-100 gpm) Mob / Demob	LS	8100
2.305	Test Pump Assembly (101-500 gpm)	\$/Hour	72
2.305a	Test Pump Assembly (101-500 gpm) Mob / Demob	LS	8100
2.306	Test Pump Assembly (1501-2500 gpm)	\$/Hour	81
2.306a	Test Pump Assembly (1501-2500 gpm) Mob / Demob	LS	8100
2.307	Test Pump Assembly (501-1500 gpm)	\$/Hour	90
2.307a	Test Pump Assembly (501-1500 gpm) Mob / Demob	LS	8100
2.308	Test Pump Engine & Fuel (300 HP & Below)	\$/Hour	72
2.308a	Test Pump Engine & Fuel (300 HP & Below) Mob / Demob	LS	1820
2.309	Test Pump Engine & Fuel (301 HP through 500 HP)	\$/Hour	81
2.309a	Test Pump Engine & Fuel (301 HP through 500 HP) Mob / Demob	LS	1818
2.31	Test Pump Engine & Fuel (501 HP through 750 HP)	\$/Hour	100
2.310a	Test Pump Engine & Fuel (501 HP through 750 HP) Mob / Demob	LS	1818
2.311	Test Pump Operator & Fuel (751 HP through 1,000 HP)	\$/Hour	65
2.311a	Test Pump Operator & Fuel (751 HP through 1,000 HP) Mob / Demob	LS	1818
Type 5 Special Contractor Owned Equipment	Item Description: (Contractor to add description and unit price of any specialized Contractor Owned equipment not listed above)	Unit of Measure	Unit Cost
/ Tool Rental			

Section 3: Contractor / Non OEM Parts and Equipment

Type 1 - Contractor Parts /

Equipment Markups

	Unit	
Parts Markup for Items with an invoiced cost of less than \$9,999 / Ea	%	15
Parts Markup for Items with an invoiced cost of Greater than \$10,000 / Ea	%	15
Subcontractor Markup	%	15
Rental Equipment Markup	%	15

Section 4: OEM Parts and Equipment

% Discount From List Price

Pumps	% Discount From List Price	
Flygt Submersible Pumps		15
EMU Submersible Pumps		15
Grundfos Pumps		15
Simflo Pumps		15
Goulds Pumps		25
Fairbanks Morse Pumps		15
Gorman Rupp		15
Wemco		15
Peerless		15
Paco Pumps		15
Flowserve Pumps		15
Motors	% Discount From List Price	
G.E.		5%
U.S.		5%
Franklin		5%

18-1616

AMENDMENT NUMBER, THREE
TO AGREEMENT BETWEEN THE CITY OF CHANDLER
AND
LAYNE CHRISTENSEN COMPANY
FOR WATER AND WASTEWATER EQUIPMENT REPAIR
AGREEMENT NO. WA0-936-2649

This Amendment # 3 to that certain Agreement between the City Of Chandler (CITY) and Layne Christensen Company (CONTRACTOR) for Water and Wastewater Equipment Repair dated, June 30, 2010 entered into this 1 day of July, 2013.

WHEREAS, The parties entered into contract for one year with provisions to extend up to four additional one year periods;

WHEREAS, The Parties have executed two of the extensions available

WHEREAS, the parties have agreed to execute the third one year extension;

NOW THEREFORE, the parties agree as follows:

1. The contract Price, Section 4.1, is revised to an amount not to exceed one million six hundred and thirty thousand dollars (\$1,630,000) when added to companion agreements.
2. This contract Term, Section 5.1, is extended for a one-year period, through June 30, 2014,

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this 1 day of July, 2013.

CITY OF CHANDLER:

By: Jay Silberman

Mayor

CONSULTANT:

By: Diana Page

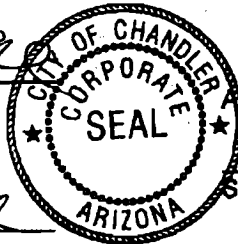
Title: ACCOUNT MANAGER
LAYNE CHRISTENSEN CO.

APPROVED AS TO FORM:

[Signature]
City Attorney

ATTEST:

[Signature]
City Clerk



ATTEST: (If corporation)

[Signature]
Secretary

WITNESS: (If individual or Partnership)

[SEAL]

**WATER AND WASTEWATER EQUIPMENT REPAIR
AGREEMENT NO.: WA0-936-2649**

THIS AGREEMENT is made and entered into this ~~30~~ day of ~~June~~, 2020, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Layne Christensen Company, a Delaware Corporation, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR:

- 1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Cost Center Manager /designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

2. SCOPE OF WORK: CONTRACTOR shall provide repair of water and wastewater equipment all as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference and as set forth in the Specifications and details included therein.

- 2.1. **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2. **Licenses.** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.
- 2.3. **Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.
- 2.4. **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.
 - 2.4.1. Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all

Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

- 2.4.2. A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.4.3. The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.4. The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.
- 2.4.5. The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.4.6. In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.
- 2.4.7. In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.
- 2.5. **One-Year Warranty.** CONTRACTOR must provide a one-year warranty on all work performed and material supplied pursuant to this Contract.
- 3. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
- 3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
- 3.4. **Property of CITY.** Any materials, including reports, computer programs and other

deliverables, created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.

4. PRICE AND TAXES:

- 4.1. Price:** CITY shall pay to CONTRACTOR an amount not to exceed one million three hundred thousand dollars (\$1,300,000) when added to companion agreements for the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit C, attached hereto and made a part hereof by reference.
- 4.2. Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
- 4.3. Price Reduction.** CONTRACTOR shall offer CITY a price reduction for its services concurrent with a published price reduction made to other customers.
- 4.4. Estimated Quantities.** The quantities shown on Exhibit C (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. City reserves the right to increase or decrease the quantities actually required.
- 4.5. Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.
- 4.6.** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.7. IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.

5. TERM:

- 5.1.** The contract term is for a one year beginning July 1, 2010 subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five-years. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.
- 5.2.** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.

6. COOPERATIVE USE AND EMERGENCY PURCHASES:

- 6.1. Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
- 6.2. Emergency Purchases:** CITY reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.

7. CITY'S CONTRACTUAL REMEDIES:

- 7.1. Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
- 7.2. Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 7.3.** If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4. Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.5. Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6. Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8. TERMINATION:

- 8.1. Termination for Convenience.** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such

termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

8.2. Termination for Cause. City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement
- 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
- 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property;
- 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.

8.3. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

8.4. Gratuities. CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.

8.5. Suspension or Debarment. CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public

procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.

- 8.6. **Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **DISPUTE RESOLUTION:**
- 10.1. **Alternative Dispute Resolution.** The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.
- 10.2. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.3. **Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.4. **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend,

indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. INSURANCE:

12.1. Insurance Representations and Requirements.

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance – Certificates of Insurance.

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve

CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage.

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.
- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

12.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$500,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001,

and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

12.5. Automobile Liability.

CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

12.6. Worker's Compensation and Employer's Liability.

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY

Contract Administrator:	
Contact:	Mike Mandt
Mailing Address:	P. Box 4008 MS 903
Physical Address:	249 E Chicago St
City, State, Zip	Chandler AZ 85244 4008
Phone:	480-782-2406
FAX:	480-782-2410

In the case of the CONTRACTOR

Firm Name:	Layne Christensen Company
Contact:	David A Paszli
Address:	2030 East Riggs Road
City, State, Zip	Chandler AZ 85249
Phone:	480-895-9404
FAX:	480-895-8699

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. CONFLICT OF INTEREST:

- 14.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests

were disclosed in CONTRACTOR'S proposal to the CITY.

14.2. Kickback Termination. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

14.3. No Conflict: CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. GENERAL TERMS:

15.1. Ownership. All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.

15.2. Entire Agreement. This Agreement, including Exhibits A, B and C attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

15.3. Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

15.4. Assignment. Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.

15.5. Amendments. The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.

15.6. Independent CONTRACTOR. The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

15.7. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no

usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

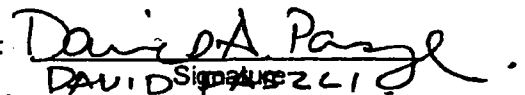
- 15.8. **Authority.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 30
day of June, 20 .

FOR THE CITY OF CHANDLER


MAYOR

FOR THE CONTRACTOR

By: 
DAVID A. PANGEL
ACCOUNT MANAGER

ATTEST:


City Clerk

SEAL

ATTEST: If Corporation

Secretary

Approved as to form:


City Attorney

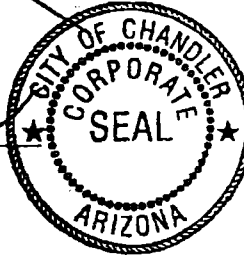


EXHIBIT A

Contractor Immigration Warranty To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number:	MU0-988-2734	
Name (as listed in the contract):		
Street Name and Number:		
City:	State:	Zip Code:

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:

David A Paszli

Printed Name: DAVID A. PASZLI

Title: ACCOUNT MANAGER

Date (month/day/year): 5-27-10

EXHIBIT B Scope of Work

1. SCOPE

The purpose of this contract is to provide equipment repair for various City departments, which currently include Water Production, Wastewater Treatment, Wastewater Collection, Reverse Osmosis, Solid Waste and Streets. The contract is separated into four categories as indicated below.

1.1 Water Treatment and Booster Facilities Pump and Process Equipment Sales and Maintenance

This work will take place at the City's Pecos Water Treatment Facility and reservoir / booster stations at various locations throughout the City. This category will include work on all types of pumps, valves and process equipment common to water treatment and booster station facilities.

1.2 Wastewater Treatment and Lift Station Pump and Process Equipment Sales and Maintenance

This work will take place at the City's Airport Water Reclamation Facility, Lone Butte Wastewater Facility, Ocotillo Water Reclamation Facility, Lift Stations and Wastewater Facilities at various locations throughout the City. This category will include work on all types of pumps, valves and process equipment common to wastewater treatment and lift station facilities.

1.3 Potable Well, Aquifer Storage and Recovery Well (ASR), Monitor Well, and Leachate Recovery Well Pump and Equipment Sales and Maintenance

This work will take place at various well locations through out the City. This category will include work on both line shaft and submersible type well pump systems, well maintenance, rehabilitation and repair, as well as work on all types of pumps, valves and process equipment common to potable, ASR and monitor well and leachate recovery facilities.

1.4 Chandler Reverse Osmosis Plant Pumps and Process Equipment Sales and Maintenance

This work will take place at the City's Reverse Osmosis Facility. This category will include work on all types of pumps, valves and process equipment common to industrial reverse osmosis water treatment facilities.

2. RESPONSE TIME

2.1 Water Treatment and Booster Facilities Pump and Process Equipment Sales and Maintenance

CONTRACTOR shall commence work within 5-calendar days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 4 days of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

2.2 Wastewater Treatment and Lift Station Pump and Process Equipment Sales and Maintenance

CONTRACTOR shall commence work within 5 days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

2.3 Potable Well, Aquifer Storage and Recovery Well (ASR), Monitor Well, and Leachate Recovery Well Pump and Equipment Sales and Maintenance

CONTRACTOR shall commence work within 10 days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 24 hours of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

2.4 Chandler Reverse Osmosis Plant Pumps and Process Equipment Sales and Maintenance

CONTRACTOR shall commence work within 5-calendar days of notification from CITY for all non-emergency calls.

CONTRACTOR shall commence work within 4 days of notification from CITY for all emergency calls.

CONTRACTOR shall commence work on warranty repairs within the same time frame specified for non-emergency and emergency calls.

3. WORK ESTIMATES AND COMPLETION TIME

Prior to CONTRACTOR performing any repair work, CONTRACTOR will be required to provide CITY a written report including condition of equipment, recommended repairs and cost of repairs. CONTRACTOR will be allowed to remove and disassemble the equipment prior to providing CITY written estimate. The written estimate will be required 72 hours after equipment has been removed.

CONTRACTOR will be required to repair and reinstall equipment within 10 working days

from approval of the work. This requirement will be adjusted if parts delivery exceeds 10 days.

4. REPLACEMENT PARTS

CITY may purchase replacement pumps, motors, and other related equipment from CONTRACTOR. The price to be paid to CONTRACTOR by CITY will be billed at the invoice price multiplied by the factor listed on Exhibit C. The factor listed will be CONTRACTOR's compensation for handling. CONTRACTOR shall include invoices for any parts for which he is seeking reimbursement. All replacement parts supplied must meet all manufacturers' specifications.

CONTRACTOR may be required to provide pricing of repair parts for specific jobs prior to CITY authorizing purchase of the parts from CONTRACTOR. CITY reserves the right to purchase pumps, motors, and other related equipment directly from the manufacturer or from other vendors if it is in CITY's best interest.

5. SUPERVISION BY THE CONTRACTOR

CONTRACTOR will supervise and direct all work. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures performed.

CONTRACTOR will employ and maintain on the work a qualified supervisor or superintendent, which shall be designated in writing by CONTRACTOR as CONTRACTOR's representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as of given to CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

6. INSPECTION

CITY Staff may monitor the work site and report to the Contract Administrator as to the progress of the Work, the manner in which it is being performed, and if material furnished and work performed by CONTRACTOR fails to fulfill the requirements of the Contract. CITY Staff may direct the attention of CONTRACTOR to such failure or infringement but such inspection shall not relieve CONTRACTOR from any obligation to furnish acceptable materials or to provide completed work that complies with the Contract.

In the case of any dispute arising between CITY staff and the CONTRACTOR as to material furnished or the manner of performing work, CITY Staff shall have the authority to reject materials or suspend the work until the question and issue can be resolved.

7. VIBRATION ANALYSIS

Repairs performed under this contract will be subject to vibration analysis and must comply with manufacturers specifications.

8. SAFETY PROCEDURES

CONTRACTOR will be responsible for coordinating their activities with CITY. Prior to the start of work, CONTRACTOR and CITY will perform a Pre-job briefing to discuss and plan for dealing with relevant safety issues such as lockout tag-out and confined space

exposures. CONTRACTOR will be responsible to properly lockout tag- out electrical hazards and ensure there is a plan to deal with other work related hazards.

9. DISINFECTION

CONTRACTOR will be responsible for disinfection of all potable water equipment with NSF approved products prior to and during installation in accordance with Maricopa County Health Code, Chapter V, Water Supply R9-8-266.

10. CLEANUP

CONTRACTOR shall remove all debris and other materials from the work site after the completion of work.

11. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

CONTRACTOR shall properly secure the work site and protect all finished or partially finished work.

12. DISPOSAL OF WASTE

CONTRACTOR will be responsible for disposal of all waste products including but not limited to oil baled from a well, debris, etc. at a legal off-site location. ANY DISPOSAL OF WASTE PRODUCTS OR UNUSED MATERIALS SHALL CONFORM TO APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS. Copies of disposal documentation shall be provided to CITY upon request.

13. WRITTEN COMPLETION REPORTS

CONTRACTOR shall submit a written completion report to CITY within 30 days of completion of work, which details work completed. The report for pump repair shall include depth of setting, bowl size and make, tube and shaft size and make, depth of well water level and other pertinent information. **The report shall include a daily log that accounts for all hours and materials billed to the job.** CITY will not make payment prior to receiving this report.

14. HOURLY RATES

CONTRACTOR will charge hourly rates listed in Exhibit C for time on scene only. Any work on Saturdays, Sundays or Holidays will require advance approval from CITY.

**Layne Christensen Company
Contract Review**

Date: 6/1/11

Layne office: Chandler, AZ

Attn: Jeny Hausladen

Owner: City of Chandler

Job Description: Water and Wastewater Equipment Repair, Agreement No. WA0-936-2649

Estimated Contract Value: \$1,363,000

In reviewing the insurance requirements of the above mentioned contract between Layne and the Owner, there are some items required in the contract that are either not insurable under Layne Christensen's insurance policies or should be discussed with the Owner and either amended or deleted from the contract.

(The items marked below were noted in the contract and should be discussed with the Owner):

- X Section 12.1.H. of the contract states, "City, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit." Please have this removed from the contract. We will not be able to provide a Surety Bond or an irrevocable and unconditional letter of credit in order to secure payment of such deductibles or self-insured retentions.
- X Section 12.1.H. of the contract states, "Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee." Please confirm with the Owner that Layne's deductibles are acceptable. Layne's deductibles are as follows:
- \$1,000,000 General Liability, per occurrence
\$1,000,000 Automobile Liability, per accident
\$1,000,000 Workers Compensation, per accident
- X Section 12.2.D. of the contract states, "Required City reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and /or endorsements." We will provide copies of the declaration pages and endorsements of each policy required.
- X Section 12.3.I. of the contract requires coverage for, "Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement." Layne's General Liability policy includes contractual liability coverage, but it is subject to the policy terms and conditions. As such, coverage may not be as broad as required. Your corporate counsel should review this wording.
- X Section 12.1.J. of the contract states, "Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with The CONTRACTOR'S information and belief." You will need corporate approval for this.

Reviewed by: Michelle Burke

EXHIBIT B
SPECIFIC REQUIREMENTS/OPTIONS OF TOWN

Notices: All notices required under the Contract shall be sent to:

Purchasing Administrator
Town of Gilbert
50 E. Civic Center Drive
Gilbert, Arizona 85296

Immigration Law Compliance Warranty: As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor verifies the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. Gilbert at its option may terminate the Contract after the third violation. Contractor shall not be deemed in material breach of this Contract if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Gilbert retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

Emergency Contact: Gilbert is an emergency response organization. Contractor services or supplies may be required in case of an emergency involving a sudden, immediate threat of danger to the public health, welfare or property in Gilbert ("local emergency") or in the case where the Mayor of Gilbert, the mayor or governing body of another municipality in Maricopa County, the Maricopa County Board of Supervisors, the State, or the President of the U.S. has declared an emergency ("State of Emergency"). In the event of a local emergency or State of Emergency, Gilbert may require Contractor to provide services or supplies as rapidly as possible and to such locations as directed by Gilbert when necessary to protect the public health and welfare and/or property. Contractor shall not be required to respond to the extent response is not feasible due to Acts of God or other factors beyond its control. Contractor shall provide the designated Gilbert Emergency Management Coordinator at (480) 503-6333 and the designated Gilbert representative with a contact point (name, cell phone number, e-mail and facsimile number) who can be reached on short notice so that effective response can be initiated.

Equal Treatment of Workers: Contractor shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of performance under the Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration ("OSHA") and the Fair Labor Standards Act ("FLSA"). Contractor shall protect and indemnify Gilbert and its representatives against any claim or liability arising from or based on the violation of such, whether by Contractor or its employees./